

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE J. BONSER,

Defendant-Appellant.

UNPUBLISHED

April 29, 1997

No. 165958

Oakland Circuit Court

LC No. 91-109021-FH

AFTER REMAND

Before: MacKenzie, P.J., and Fitzgerald and J. P. O'Brien*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3). He then pleaded guilty to being an habitual offender, second offense, MCL 769.10; MSA 28.1082, and was sentenced to 7 to 22½ years' imprisonment. Defendant appealed as of right, claiming that the trial court erred in denying his motion to dismiss for lack of a speedy trial. In our prior opinion, we held that the trial court improperly placed the burden on defendant to produce evidence of prejudice given the presumption of prejudice created by the nineteen-month delay in prosecuting the case. We therefore remanded for reconsideration of the claim, with the burden of persuasion shifted to the prosecution to prove lack of prejudice. On remand, the trial court again denied the motion to dismiss. We affirm.

We find no error in the trial court's conclusion that the prosecution rebutted the presumption of prejudice by showing that the defense was not impaired by the delay in bringing this case to trial. Defendant took the position that he was prejudiced because the child victim's memory of the incident was impaired by the delay. However, we are satisfied that the victim's failure to remember the incident worked in defendant's favor by reducing her credibility as a witness. Moreover, defendant was not denied meaningful cross-examination of the victim since he could highlight the fact that she could not remember the incident which had allegedly occurred. Thus, it would appear that the delay was not prejudicial to defendant, but instead was helpful because the prosecution's key witness had difficulty remembering the conduct for which defendant was being tried.

* Recorder's Court judge, sitting on the Court of Appeals by assignment.

Defendant also takes the position that the prosecution's inability to locate and call Robert Lewis as a witness was prejudicial. We agree with the trial court that the fact that the delay caused the prosecution to be unable to call Lewis was not prejudicial. Lewis's statement to the police was that the only thing he saw when he woke up was defendant, "groping" himself in Kelly Eberle's room. That statement was neither particularly helpful to defendant, since it placed him at the location of the offense; nor was it particularly helpful to the prosecution, since Lewis essentially stated he was asleep and didn't see anything happen. Under these circumstances, we find no error in the conclusion that defendant was not prejudiced by the delay in bringing the case to trial. Accordingly, the trial court properly denied defendant's motion to dismiss for lack of a speedy trial.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ E. Thomas Fitzgerald

/s/ John P. O'Brien